

STATE OF MICHIGAN
COURT OF APPEALS

JOHN ROBERT FISHER and JOANN FISHER,

Plaintiffs-Appellants/Counter-
Defendants,

v

CORNELL ENGINEERING, ROBERT
DANIELSON, MICHAEL HENDERSON,
MOTORCITY MUSCLE,

Defendants/Counter-Plaintiffs,

and

D&S ENGINE SPECIALISTS, INC.,

Defendant-Appellee/Counter-
Plaintiff.

UNPUBLISHED

October 18, 2007

No. 270252

Oakland Circuit Court

LC No. 2005-070637-CP

DANIELSON HOLDINGS, LLC.,

Plaintiff-Appellee,

v

JOHN ROBERT FISHER and JOANN FISHER,

Defendants-Appellants,

and

D&S ENGINE SPECIALISTS, INC.,

Defendant-Appellee.

No. 270258

Oakland Circuit Court

LC No. 2004-071117-CP

Before: Cavanagh, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

John and Joann Fisher (the Fishers), appeal as of right a circuit court order granting summary disposition in favor of D&S Engine Specialists, Inc. (D&S), and dismissing all remaining claims due to the application of res judicata after the parties' acceptance of case evaluation and entry of judgment in the district court. Because the circuit court did not abuse its discretion when it ruled that the application of the doctrine of res judicata barred the Fishers' claims in the circuit court, we affirm.

I

These consolidated appeals arise out of an agreement wherein D&S agreed to perform engine repairs on a 1989 Porsche 928 owned by the Fishers. John Fisher brought the Porsche to D&S on January 21, 2004 and provided a deposit of \$3,500. Over the next several months D&S performed repairs and John Fisher paid third parties for replacement parts and other items to be used by D&S during the course of the repairs. On September 16, 2004, John Fisher filed a complaint in the district court against D&S¹ alleging that the repairs on the Porsche were not complete and that the vehicle was still at D&S's premises. John Fisher's complaint alleged breach of contract; misrepresentation; fraud; violation of the Michigan Consumer Protection Act, MCL 445.901; statutory and common law conversion; and violation of the Michigan Motor Vehicle Service and Repair Act, MCL 257.1301. Regarding relief, John Fisher's complaint requested the following: "judgment against Defendants in whatever amount below \$25,000 Plaintiff is found to be entitled, in an amount to be doubled if the violations are found to be wilful and flagrant, plus interest, costs and reasonable attorney fees as allowed by MCL 257.1301." But, plaintiffs sought by their District Court complaint the total value of the subject vehicle including incidental and consequential damages as a result of defendant's conversion². D&S responded by filing a counter-complaint against John Fisher in the district court.

The matters went to case evaluation in August 2005. Both John Fisher and D&S accepted case evaluation in the amount of \$16,500 awarded to John Fisher. Following formal acceptance of case evaluation, the district court held a hearing on a motion for entry of judgment during which the parties sought clarification on the effect of the case evaluation acceptance. The parties both agreed that there was no dispute regarding the acceptance of case evaluation, but disagreed regarding whether the acceptance of case evaluation resulted in D&S (who possessed the vehicle) returning the Porsche to John Fisher (who retained title to the vehicle). After entertaining lengthy arguments on the singular issue, the district court noted that neither party requested the vehicle in their pleadings, and stated as follows, "you've got an interesting situation. I can't give title to you, it's an equitable remedy. I can't give possession to you, it's an equitable remedy. You're both stuck. . . . You're not going to be in this Court, you're going

¹ The complaint also listed Cliff's Import Service, Inc. as a defendant, but the record shows that it was dismissed as of July 6, 2005.

² DISTRICT COURT COMPLAINT, COUNT V, COMMON LAW CONVERSION (D&S ONLY), Paragraph 38, "As a result of this conversion Plaintiff suffered total damages in the amount of the value of the subject vehicle at the time of conversion, plus incidental and consequential damages."

to circuit.” Thereafter, the district court entered a judgment reflecting the parties’ acceptance of the case evaluation on November 22, 2005, awarding plaintiff \$16,500 inclusive of all costs, attorney fees, and interest, and closing the case.

John Fisher, together with his wife, Joann Fisher filed a complaint in the circuit court on November 18, 2005 claiming the right to possession of the Porsche. The complaint listed several defendants including D&S, Cornell Engineering, Inc., Robert Danielson, Michael Henderson, and Motorcity Muscle. The complaint alleged counts for claim and delivery; and theft, concealment, and/or conversion and sought the return of the Porsche and parts as well as costs, attorney fees, interest, and damages in excess of \$25,000. D&S and the other defendants responded by filing a counter-complaint against the Fishers in the circuit court including counts for declaratory relief and claim and delivery of the Porsche. D&S asked for relief in the form of a declaratory judgment that D&S is entitled to possession of the Porsche and parts, free and clear title to the Porsche, and any other damages or costs. Danielson Holdings, a company purporting to be a stakeholder in the action because it owned the property at which the Porsche had been stored during the repair process, filed a complaint on December 13, 2005 for interpleader seeking storage fees for the vehicle.

D&S and Danielson Holdings filed motions for summary disposition of the Fishers’ complaint. After entertaining oral argument, the trial court ruled from the bench granting the motions on the basis of the doctrine of res judicata barring the Fishers’ claim for conversion in the circuit court on March 22, 2006. In an opinion and order dated April 12, 2006, the circuit court denied the Fishers’ motion for reconsideration declaring that it had not read or relied on the case evaluation summary when ruling on the motions for summary disposition and finding that the Fishers failed to demonstrate a palpable error mandating a different disposition. Shortly thereafter, D&S brought a motion before the court for entry of order for presentment to the Secretary of State declaring title to the Porsche transferred to D&S. The trial court granted D&S’s motion and in so doing dismissed the counter-complaint as moot and closed the case in a final order issued April 26, 2006. The order stated specifically that the Porsche “shall be in the name of D&S Engine Specialists, Inc. as the sole and only title holder of said vehicle.” These appeals followed.

II

The Fishers first argue that the circuit court improperly granted *sua sponte* relief to D&S when D&S’s counter-complaint and Danielson Holding’s interpleader were not properly before the circuit court. Specifically, the Fishers contend that the only way for the circuit court to transfer title of the Porsche to D&S was through granting relief on D&S’s counter-complaint which was not properly before the court when it ruled on the motion for summary disposition on the Fishers’ complaint. D&S responds that the issue presented in both the Fishers’ complaint and D&S’s counter-complaint were exactly the same because both actions involved the single question of ownership and possession of the vehicle. D&S contends in particular that a determination in either one of the actions resolved the only issue and made resolution of the other action unnecessary, therefore no error occurred when the trial court dismissed the counter-complaint and interpleader as moot.

A trial court's decision to dismiss an action on procedural grounds is reviewed for an abuse of discretion. *Vicencio v Ramirez*, 211 Mich App 501, 506; 536 NW2d 280 (1995). The abuse of discretion standard is deferential and acknowledges that there is no single correct outcome. When a trial court chooses a reasoned and principled outcome, it does not abuse its discretion. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). Our review of the record reveals that the complaint, counter-complaint, and interpleader all concerned the same issue, who was entitled to possession and title of the vehicle. Once the trial court determined that D&S was entitled to possession and title of the Porsche after reviewing the pleadings, D&S's counter-complaint and Danielson Holdings' interpleader concerning the same issue became moot. Moving forward on either D&S's counter-complaint and Danielson Holdings' interpleader would simply amount to relitigating the same issues. Thus, the trial court did not abuse its discretion when it dismissed the counter-complaint and interpleader as part of its granting of summary disposition in favor of D&S. The Fisher's argument that they did not have an opportunity to brief the issues in the counter-complaint and interpleader is disingenuous because the issue was the same. The trial court did not err because it is empowered to grant such relief without delay as a corollary to MCR 2.116(I)(2).³

Because of our resolution of this issue, we decline to address the Fishers' argument regarding the frivolity of the interpleader. In any event, the Fishers offer no legal support for their claims regarding this issue, do not explain how they were harmed by the mere filing interpleader, and do not request a remedy for this argument. It is insufficient for a party "simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

III

Next, the Fishers argue that the circuit court misapplied the doctrine of res judicata asserting that the trial court errantly ruled that res judicata applied to the Fishers but not to D&S. D&S argues that the circuit court properly ruled that the doctrine of res judicata precluded the Fishers from relitigating their claim for conversion. The application of a legal doctrine, such as res judicata, presents a question of law that is reviewed de novo. *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 379; 596 NW2d 153 (1999).

The doctrine of res judicata is employed to prevent multiple suits litigating the same cause of action. The doctrine of res judicata bars a second, subsequent action "when (1) the first action was decided on the merits, (2) the matter contested in the second action was or could have been resolved in the first, and (3) both actions involve the same parties or their privies." *Sewell v Clean Cut Mgt*, 463 Mich 569, 575; 621 NW2d 222 (2001). "This Court has taken a broad

³ Pursuant to MCR 2.116(I)(2), "[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party." We note that under this fact pattern while D&S was initially the moving party, it was necessarily the opposing party on the motion for reconsideration.

approach to the doctrine of res judicata, holding that it bars not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not.” *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999). And, accepting a case evaluation means that all claims in the action, even those summarily disposed, are dismissed. MCR 2.403(M)(1); *CAM Construction v Lake Edgewood Condo Ass’n*, 465 Mich 549, 555; 640 NW2d 256 (2002). Case evaluations bring the full force of res judicata to bear on subsequent adjudications. See *id.*

In their brief on appeal, the Fishers contend that during the pendency of the litigation in the district court “no one disputed the ownership of [the Fishers’] car.” They also admit that they “did not file an action for Claim and Delivery in this matter[.]” The record shows that the first time the issue of possession and title of the car was raised was not until after all parties accepted case evaluation. The district court specifically declined to grant an equitable remedy and directed the parties to circuit court. Plainly, the issue of possession and title of the car was an issue that could have been raised by the Fishers in the first action. Therefore, it was incumbent upon the Fishers to raise the issue during the prosecution of their claim. Yet, the Fishers chose to seek only money damages in the amount of the fair market value of the car and loss of use, and not the car itself. When the Fishers accepted the case evaluation award without reservation, such acceptance means, as a matter of law, that all claims or potential related claims in the action are dismissed. MCR 2.403(M)(1); *CAM Construction, supra*. Thus, whether choosing not to seek the return of the Porsche was a strategic decision or a mistake is now of no consequence because the case is fully settled since both parties accepted the case evaluation award. *Id.* And therefore, the application of res judicata bars the Fishers from raising this claim that with reasonable diligence could have been raised in the previous litigation. *Dart, supra*.

Also, the Fishers have not shown that the circuit court misapplied the doctrine of res judicata when it ruled that res judicata barred their claim, but not D&S’s claim. The record displays that the Fishers sued D&S for conversion of their vehicle in the district court. The tort of conversion is “any distinct act of domain wrongfully exerted over another’s personal property in denial of or inconsistent with the rights therein.” *Foremost Ins Co v Allstate Ins Co*, 439 Mich 378, 391; 486 NW2d 600 (1992). The measure of damages for conversion is generally the value of the converted property at the time of the conversion. *Ehman v Libralter Plastics, Inc*, 207 Mich App 43, 45; 523 NW2d 639 (1994). Again, in bringing this claim, the Fishers asked only for money damages and not possession of the car. Already possessing the car by virtue of the conversion, D&S did not petition the district court for title. Now, the Fishers contend that if res judicata bars their claim to the vehicle, then it should also bar D&S’s claim to the vehicle because D&S never asked for the vehicle in the previous action either.

But the Fishers have not shown how it was incumbent on D&S to raise a claim for the vehicle it already possessed while it was defending against the Fishers’ claim in the district court. It was not until after the Fishers chose the manner of compensation for the tort--solely a money judgment rather than the return of the car or the return of the car together with a sum of money--were the parties’ rights defined. After the Fishers chose not to seek return of the car, it was not improper for D&S to then petition the court for title to the vehicle of which it already possessed through the conversion and paid for in damages. Hence, the Fishers argument regarding res judicata fails because it is not supported by the record.

The Fishers also suggest that the doctrine of res judicata cannot apply to Joann Fisher because she was not a named plaintiff in the district action. Privity requires a substantial identity of interests and a relationship in which the interests of the nonparty were presented and protected by the litigant in the first action. *ANR Pipeline Co v Dep't of Treasury*, 266 Mich App 190, 214; 699 NW2d 707 (2005). As to private parties, a privity includes a person so identified in interest with another that he represents the same legal right, such as a principal to and agent, a master to a servant, or an indemnitor to an indemnitee. *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 15; 672 NW2d 351 (2003). Under the specific facts of this case, Joann Fisher was a privity of James Fisher. Joann and James Fisher were husband and wife and both Fishers were titled owners of the vehicle. Both Joann and James Fisher shared identical interests in the vehicle and had the same legal rights. James Fisher asserted these legal rights in the district court action and thus, as a privity of James Fisher, Joann Fisher is barred from relitigating the issues already adjudicated in the district court.

IV

Next, the Fishers argue that the trial court erred when it allowed D&S to admit district court case evaluation summaries into the record at the circuit court relying on MCR 2.403(J)(4). D&S counters that no error occurred because the circuit court did not consider the case evaluation summaries in granting its motion for summary disposition and further, the mere mention of the summaries for purposes of determining the claims resolved at case evaluation is not reversible error. We review the trial court's evidentiary decisions for an abuse of discretion. *Elezovic v Ford Motor Co*, 472 Mich 408, 419; 697 NW2d 851 (2005).

MCR 2.403(J)(4) provides that where a case has been submitted to case evaluation, "[s]tatements by the attorneys and the briefs or summaries are not admissible in any court or evidentiary proceeding." Here, the record reveals that the circuit court did not consider the case evaluation summary in making its decision. The trial court stated as follows:

Here it's clear after reviewing the complaint filed in the district court that the conversion of the vehicle was litigated in the district court and plaintiffs elected to receive damages instead of return of the vehicle. The Court notes plaintiffs' objection to any consideration of the case evaluation summary submitted in the district court and this Court did not consider it.

Therefore it is clear that the trial court did not examine the case evaluation summaries and no violation of MCR 2.403(J)(4) occurred. However, we point out that a court may take cognizance of what was discussed in the course of case evaluation for purposes of ascertaining whether those discussions led to adjudication on the merits of an issue. See *Amburgey v Sauder*, 238 Mich App 228, 247-248; 605 NW2d 84 (1999) (examining mediation discussions to determine whether the issue was decided on the merits). Because the application of res judicata was at issue with regard to case resolved through case evaluation, it would not have been error for the trial court to consult the case evaluation summaries to the extent necessary to ascertain whether the conversion claim had in fact been adjudicated while not assessing the merits of the Fishers' conversion claim.

V

The Fishers also argue that the circuit court erred when it ruled that a cause of action for conversion necessarily results in the transfer of ownership of the goods allegedly converted. It is D&S's position that the circuit court properly determined that entry of judgment in the district court on the Fishers' conversion claim in which they sought only damages for the fair market value of the vehicle, not its return, operated as a forced sale of the vehicle to D&S. Contrary to the Fishers' argument, our review of the record reveals that the circuit court made no ruling as a matter of law that "a cause of action for conversion necessarily results in the transfer of ownership of the goods allegedly converted." Instead, as we concluded above in Section III, the circuit court properly determined that due to the Fishers' acceptance of a money judgment through case evaluation, the operation of res judicata bars its later claim for possession and title of the car. Therefore, no error occurred.

However, since both parties briefed the issue, we briefly address the substance of the issue and point out that it is longstanding law in Michigan that a party bringing an action for conversion should not be twice compensated with both the value of the property converted as well as the return of the property itself. *Maycroft v The Jennings Farms*, 209 Mich 187, 192-193; 176 NW 545 (1920). The *Maycroft* Court explained that,

Conversion of personal property amounts to an attempt, on the part of the person doing the act, to wrongfully transfer the title to himself. The bringing of an action of trover amounts to an action on the part of the owner to ratify that which was before illegal, and to make it legal. The title then passes completely as of the date of the illegal taking. Hence the rule that the measure of damages for conversion is the value of the property at the time of conversion, with interest. When, however, the property is returned to the owner, either voluntarily, or at his suit, or by purchase by him, an entirely different principle intervenes. In that case compensation to him would be measured, not by the value of the property attempted to be converted, but by the deterioration, in value, if any, between the time of the illegal taking and the return to the owner, the reasonable value of its use, if it was of such a character as to be valuable for use, during the period of detention, costs and expenses in recovering the same, and perhaps other items in special circumstances. In this way the injured owner would be fully compensated, and this is always the object of the law.

The two principles above stated are necessarily antagonistic, and can have no concurrent application in any given case. If an owner elects to ratify a conversion of his property, and thus effect a transfer of the title thereon to the trespasser, he no longer owns the property, has no right to its use, and is damaged only to the extent of its value and interest. If, on the other hand, he disavows the attempted conversion and recovers the property, it was his property all the time, and he may recover for the loss of its use, if valuable for use, during the time of its detention. He cannot have both the value of the property at the time of the conversion and the value of its use. This would be clear on reason, and is supported by authority. [*Maycroft v The Jennings Farms*, 209 Mich 187, 192-193; 176 NW 545 (1920) (internal citations and quotations omitted).]

Hence, under the circumstances of this case, even had the circuit court specifically held as a matter of law that D&S's conversion of the automobile resulted in a transfer of ownership when

the Fishers sought the monetary value of the vehicle, rather than the return of vehicle itself plus the reasonable value of its use during the conversion, the trial court would have been correct. *Id.* No error occurred.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Pat M. Donofrio
/s/ Deborah A. Servitto